

304.36-080 Powers and duties of association.

(1) The association shall:

- (a) Be obligated to the extent of the covered claims existing prior to the order of liquidation and arising within thirty (30) days after the order of liquidation, or before the policy expiration date if less than thirty (30) days after the order of liquidation, or before the insured replaces the policy or on request effects cancellation, if he does so within thirty (30) days of the order of liquidation. The obligation shall be satisfied by paying to the claimant an amount as follows:
 1. The full amount of a covered claim for benefits arising from a workers' compensation insurance policy purchased to satisfy the requirements of KRS 342.340;
 2. An amount not exceeding ten thousand dollars (\$10,000) per policy for a covered claim for the return of unearned premium; or
 3. An amount not exceeding three hundred thousand dollars (\$300,000) per claimant for all other covered claims.
- (b) Not be obligated to pay a claimant an amount in excess of the obligation of the insolvent insurer under the policy or coverage from which the claim arises. Notwithstanding any other provisions of this subtitle, a covered claim shall not include a claim filed with the association after the earlier of twelve (12) months after the date of the order of liquidation, or the final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer and shall not include any claim filed with the association or a liquidator for protection afforded under the insured's policy for incurred but not reported losses. Any obligation of the association to defend an insured shall cease upon the association's payment or tender of an amount equal to the lesser of the association's covered claim obligation limit or the applicable policy limit. Notwithstanding any other provisions of this subtitle, except in the case of a claim for benefits under workers' compensation coverage, any obligation of the association to any and all persons shall cease when ten million dollars (\$10,000,000) shall have been paid in the aggregate by the association and any one (1) or more associations similar to the association of any other state or states or any property/casualty security fund that obtains contributions from insurers on a preinsolvency basis to or on behalf of any insured and its affiliates on covered claims or allowed claims arising under the policy or policies of any one (1) insolvent insurer. For purposes of this section, the term "affiliate" shall mean a person who directly or indirectly, through one (1) or more intermediaries, controls, is controlled by, or is under common control with another person. If the claimant has a covered claim or allowed claim against the association or any associations similar to the association or any property and casualty insurance security fund of another states, under the policy or policies of any one (1) insolvent insurer, the association may establish a plan to allocate amounts payable by the association in a manner as the association in its discretion deems equitable;

- (c) Be deemed the insurer to the extent of its obligation on the covered claims and to that extent shall have all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent, including, but not limited to, the right to pursue and retain salvage and subrogation recoverable on paid covered claim obligations;
- (d) Assess insurers amounts necessary to pay the obligations of the association under paragraph (a) of this subsection subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency, and the cost of examinations under KRS 304.36-130 and other expenses authorized by this subtitle. The assessments of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the calendar year preceding the assessment bears to the net direct written premiums of all member insurers for the calendar year preceding the assessment. Each member insurer shall be notified of the assessment not later than thirty (30) days before it is due. No member insurer may be assessed in any year an amount greater than two percent (2%) of that member insurer's net direct written premiums for the calendar year preceding the assessment. If the maximum assessment, together with the other assets of the association, does not provide in any one (1) year an amount sufficient to make all necessary payments, the funds available shall be prorated and the unpaid portion shall be paid as soon thereafter as funds become available. The association shall pay claims in any order which it may deem reasonable including the payment of claims as such are received from the claimants or in groups or categories of claims. The association may exempt or defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance; provided, however, that during the period of deferment, no dividends shall be paid to shareholders or policyholders. Deferred assessments shall be paid when such payment will not reduce capital and surplus below required minimums. Such payments shall be refunded to those companies receiving larger assessments by virtue of such deferment, or at the election of any such company, credited against future assessments. Each member insurer serving as a servicing facility may set off against any assessment authorized payments made on covered claims and expenses incurred in the payment of such claims by such member insurer;
- (e) Investigate claims brought against the association and adjust, compromise, settle, and pay covered claims to the extent of the association's obligation and deny all other claims;
- (f) Notify such persons as the executive director directs under KRS 304.36-100(2)(a);
- (g) Handle claims through its employees or through one (1) or more insurers or other persons designated as servicing facilities. Designation of a servicing

facility is subject to the approval of the executive director, but such designation may be declined by a member insurer; and

- (h) Reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association and shall pay the other expenses of the association authorized by this subtitle.
- (2) The association may:
- (a) Appear in, defend, and appeal any action on a claim brought against the association;
 - (b) Employ or retain such persons as are necessary to handle claims and perform other duties of the association;
 - (c) Borrow funds necessary to effect the purposes of this subtitle in accord with the plan of operation;
 - (d) Sue or be sued;
 - (e) Negotiate and become a party to such contracts as are necessary to carry out the purpose of this subtitle;
 - (f) Perform such other acts as are necessary or proper to effectuate the purpose of this subtitle; and
 - (g) Refund to the member insurers in proportion to the contribution of each member insurer to the association that amount by which the assets of the association exceed the liabilities, if, at the end of any calendar year, the board of directors finds that the assets of the association exceed the liabilities of the association as estimated by the board of directors for the coming year.

Effective: July 15, 1998

History: Amended 1998 Ky. Acts ch. 99, sec. 5, effective July 15, 1998. -- Amended 1990 Ky. Acts ch. 268, sec. 1, effective July 13, 1990. -- Amended 1986 Ky. Acts ch. 437, sec. 24, effective July 15, 1986. -- Amended 1984 Ky. Acts ch. 322, sec. 15, effective July 13, 1984. -- Created 1972 Ky. Acts ch. 137, sec. 8, effective June 16, 1972.

Legislative Research Commission Note (6/20/2005). 2005 Ky. Acts chs. 11, 85, 95, 97, 98, 99, 123, and 181 instruct the Reviser of Statutes to correct statutory references to agencies and officers whose names have been changed in 2005 legislation confirming the reorganization of the executive branch. Such a correction has been made in this section.